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EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re WC Docket No. 03-194 - *In re Application by Qwest Communications International Inc. for Authority to Provide In-Region, InterLATA Services in Arizona*

Dear Ms. Dortch

Eschelon submits this Ex Parte letter regarding the application of Qwest Communications International, Inc. ("Qwest") for authorization under Section 271 of the Communications Act for authority to provide In-Region, InterLATA services in Arizona. Eschelon is also available to discuss these issues, if desired.¹

On September 29, 2003, Qwest filed an Ex Parte letter ("Qwest Ex Parte C"), which Qwest said it was "filing at the request of the Department of Justice ["DOJ"] to clarify its policy with respect to constructing DS1 loop facilities." Earlier, the DOJ had asked Eschelon for information about this same issue. Eschelon filed a copy of the materials that it had provided in response to the DOJ with the Federal Communications Commission ("FCC") on September 19, 2003 ("Eschelon Ex Parte").² Eschelon responds to statements in Qwest's Ex Parte C in this letter. In addition, now that the FCC has granted Qwest's 271 applications in all of its states except Arizona, Qwest has commenced anti-competitive advertising campaigns that require review. The manner in which Qwest is using its technicians in these advertisements and winback efforts also raises questions. Both of these issues are addressed in this letter.

¹ Eschelon understands that Reply Comments are due on October 17, 2003. If the FCC for any reason deems these comments to be Reply Comments, please note that the fact that Eschelon only responds to the one Qwest Ex Parte filing does not in any way suggest that Eschelon's silence on other issues means agreement. Resource constraints prevent a full response to all issues, but Eschelon had to respond to the particularly egregious misstatement with respect to the DS1 capable loop issue.

² In response to a request from the FCC to number the pages consecutively, Eschelon re-filed the materials again in an electronic filing on October 8, 2003. Page numbers referred to here are the page numbers from the October 8, 2003 filing. 2+2

Dramatic Increase in Rejection of DS1 Capable Loop Orders

Eschelon and other Competitive Local Exchange Carriers ("CLECs") described the DS1 capable loop issue in Comments and Reply Comments filed with the Arizona Corporation Commission ("ACC"),³ and Eschelon also did so in its previous Ex Parte filing in this matter

Qwest attempts to minimize the DS1 capable loop problem, claiming that it resulted from a mere "clarification" that was "viewed as a policy change by some." See Qwest Ex Parte C, p. 1. Qwest's conduct, however, had a dramatic impact on the CLEC community, including Eschelon. Twelve CLECs joined in opposition to Qwest's conduct,⁴ and additional CLECs opposed Qwest's conduct during a conference call to discuss the issue in August of 2003. The impact of Qwest's conduct was sudden and significant. After Eschelon received only 3 DS1 service inquiry (no build) jeopardy notices in Arizona for the first half of 2003, the number jumped so that approximately **fifty percent** of Eschelon's DS1 orders went held for no facilities between June 15, 2003 and August 15, 2003 *in Arizona*. Across the six states in Qwest territory where Eschelon does business, there was an overall **thirty-fold** increase in DS1 service inquiry (no build) jeopardy notices. It is not simply Eschelon's "view" that the number increased. The sudden jump is a fact. Qwest's tactic of calling its conduct a "clarification," rather than a "change," does not reduce the significant and sudden nature of the change.⁵ Nor does it decrease the harm that Qwest caused to its competitors.⁶ For example, Cbeyond, which experienced an almost **twenty percent** jump in these held orders from the start, reported that Qwest's policy change had "crippled" its ability to compete.⁷

Qwest also attempts to minimize the nature of the change by indicating that "prior to June 16, CLECs were not always charged for such construction." See Qwest Ex Parte C, p. 1. Before June 16, 2003, Qwest **never** charged construction charges for the activities newly deemed to be "construction" activities. Qwest did not deem these activities to be construction at all.⁸ Only after Qwest implemented its change (aka "clarification") did Qwest unilaterally deem activities to be "construction" that not only resulted in additional charges but also significant delays. The orders that constitute the entire thirty-fold increase in DS1 service inquiry (no build) jeopardy

³ Eschelon's Comments Regarding Second Staff Report, AZ Docket No. T-00000A-97-0238 (July 18, 2003), pp. 4-11; Eschelon's Reply Comments Regarding Second Staff Report. (same AZ Docket No.) (July 25, 2003), pp. 9-12; see also Reply Comments (July 25, 2003) by AT&T, Covad, MTI, and WCOM.

⁴ See 12-CLEC Proposal, p. 97. Eschelon Ex Parte (Oct. 8, 2003).

⁵ Moreover, Qwest admitted to the ACC that this was, in fact, a "change." See Transcript, Special Open Meeting ACC Docket No. T-00000A-97-0238, p. 40, lines 6-10 and p. 42, line 3.

⁶ Qwest's performance results will not reflect this harm, because its performance measures do not capture these problems. The provisioning measures are based on completion, and these orders do not complete.

⁷ Verified Accelerated Formal Complaint of Cbeyond Communications, LLC Against Qwest Corporation. Colorado Public Utilities Commission, Docket No. 03F-357F, ¶ 7 & ¶ 31 (August 11, 2003).

⁸ "Pursuant to that document [Qwest CRUNEC policy], Qwest did not impose construction charges on requests that could be resolved through facility work or assignments. Thus, line conditioning historically had not been subject to 'construction' charges." See Reply Comments of Mountain Telecommunications, Inc. Regarding Staff's Second Report, AZ Docket No. T-00000A-97-0238 p. 2 (July 25, 2003).

notices that Eschelon experienced in Qwest territory after June 15, 2003, involve activities for which Qwest charged no construction charges before June 15, 2003 but claimed after June 15, 2003 would result in such charges, if they were processed at all. Qwest's statement that "prior to June 16, CLECs were not always charged for such construction" is therefore very misleading. Qwest did not charge construction charges for these activities before June 15, 2003. Qwest recovers the costs for these activities in the recurring and non-recurring rates established by the ACC.

Qwest unilaterally implemented a significant change, and it did so in an improper manner. In the ACC's 271 Order, the Commission reported that "Staff is extremely concerned that Qwest would implement such a significant change through its CMP process without prior Commission approval." See ACC Decision No. 66242, Docket No. T-00000A-97-0238, ¶109 (Sept. 16, 2003). After CLECs complained about this issue to state commissions and the FCC, Qwest finally reversed its position. Qwest claimed, however, that its decision to do so was "interim" only. Qwest dropped the "interim" designation only after the ACC addressed this issue in the Arizona 271 proceeding. During the ACC Open Meeting on September 8, 2003, counsel for Qwest committed to return "100%" to the processes in place before June 2003.⁹ The question now is for how long. That Qwest is so nonchalant, unapologetic, and misleading about disruptive conduct that seriously harmed its competitors and which was expressly rejected by the ACC¹⁰ does not bode well for the future.

Qwest should not be allowed to re-implement such a unilateral change, because of the adverse impact on end user customers, CLECs, and competition. If the FCC approves Qwest's 271 application for Arizona, the FCC should point out to Qwest that the FCC has addressed "construction" and the definition of "routine network modifications" in its Triennial Review Order.¹¹ Consistent with that Order, Qwest should not be allowed to unilaterally define construction in a manner that imposes costs and delay on CLECs without commission approval.

Qwest Advertising Campaigns and Technician Role in Winbacks

Now that Qwest has received 271 approval in all but one of its states, Qwest has commenced two advertising campaigns that raise questions about the post-271 approval environment. Qwest's use of its technicians in these advertisements and winback efforts also raises serious questions.

⁹ In Qwest Ex Parte C, Qwest appears to back away somewhat from this commitment, indicating that "Qwest's current DSL loop construction policy is materially the same as the policy that had been applied to CLECs before June 16."

¹⁰ See ACC Decision No. 66242, Docket No. T-00000A-97-0238, ¶109 (Sept. 16, 2003).

¹¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, ¶¶ 631-40 (Aug. 21, 2003).

In the first campaign, Qwest states that other telephone companies ("CLECs") are dropping the ball, and Qwest is picking it up. See Attachment 9 to Exhibit 1. The advertisement depicts a Qwest Central Office ("CO") Technician who connects a CLEC customer directly to the Qwest retail business office and stays on the line to ensure a Qwest winback. The advertisement, which relates to Qwest unlimited local and long-distance for business, is on the Qwest wholesale web site, which is accessible to individuals in all 14 of Qwest's states.¹² Problems with this advertisement are discussed in the enclosed Supplemental Comments, which Eschelon filed recently with the Minnesota Public Utilities Commission. See Exhibit 1. Qwest ran the advertisement in the *Star Tribune* again today, despite Eschelon's notice to Qwest of its objections through its filing in Minnesota.¹³

In the second campaign, Qwest depicts a technician and a Qwest line truck in a television commercial and indicates the technician is working on the network. Qwest's message in the commercial is to the effect that, no matter which carrier's name appears on a customer's bill, Qwest is still the one providing the service.¹⁴ This commercial has aired recently in at least the states of Arizona and Washington.¹⁵ Over the last several years, the state commissions have spent a lot of time on issues such as branding,¹⁶ single points of contact, party responsibility, and related issues to ensure that end user customers are not mislead or confused about the identity of their carrier. In a single commercial, Qwest has interjected the very confusion and problems that should have been avoided by the mechanisms that have been put in place to allegedly ensure a non-discriminatory competitive environment.

For example, the Arizona Statement of Generally Available Terms ("SGAT") specifically provides

Neither Party shall without the express written permission of the other Party, state or imply that 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates, 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services, or 4) with respect to its marketing, advertising or

¹² See <http://www.qwest.com/unlimitedbiz/>. A footnote in the advertisement states "Not available in AZ."

¹³ The Minnesota commission has not yet addressed the issue, which was only recently brought to its attention after the advertisement ran in the Minnesota newspaper.

¹⁴ On September 27, 2003, at approximately 1:00 pm on the NBC channel in Washington, for example, the Qwest commercial depicted a Qwest technician named Scott who says "Even if you do write your checks to some of the other phone companies, I am still the one that makes sure your calls get through." The commercial begins with Scott's beeper going off at night, and he talks about a sense of urgency while showing his sleeping child before he leaves to get in his Qwest line truck.

¹⁵ Because this is a television commercial, Eschelon cannot provide a printed copy with this filing. The FCC should ask Qwest to provide it with a taped copy so that the FCC may evaluate it.

¹⁶ The Arizona SGAT provides that "Qwest shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers." See AZ SGAT § 12.3.2.1. The current Arizona interconnection agreement between Qwest and Eschelon also provides for providing unbranded information in some circumstances. See AZ ICA, Part A, § 8. The purpose of these provisions, however, is defeated when Qwest first tells the CLEC's end user customers, through its commercials, that Qwest is actually providing the service.

promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.

See AZ SGAT ¶ 5.10.5.¹⁷ In its “promotional activities” Qwest is implying that resold goods and services “originated with” Qwest, in violation of this provision. See *id.* (sub-paragraph 4)

In addition, with respect to entirely facilities-based service, Qwest's suggestion simply is not true. When the purely facilities-based carrier's name is on the bill, Qwest is not providing the service. At a time when the FCC appears to be encouraging more facilities-based competition, Qwest's inaccurate promotional statements harm the very competitors who are engaging in such competition.

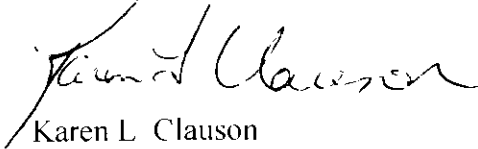
In both of these advertising campaigns, Qwest relies on its technicians to deliver its message. Qwest uses the same technicians for both retail and wholesale work. Those individuals are in a position, therefore, to access wholesale information and misuse it for improper winback activity. A Qwest technician recently did so in Arizona. The Qwest technician working in a wholesale capacity on an Eschelon repair noted, when closing the repair ticket, that the technician had made a referral to the Qwest retail business office for a winback. *See Attachment 8 to Exhibit 2.* Qwest exploited carrier-to-carrier information about an outage to attempt to winback a customer. Eschelon describes this problem in the enclosed Supplemental Comments, which Eschelon filed recently with the Minnesota Public Utilities Commission. *See Exhibit 2.* If Qwest uses technicians to circumvent the rules on use of Customer Proprietary Network Information and winback activity, this back-sliding activity will harm competition, as well as competitors.

Qwest's pending 271 application represents a last chance to use the incentive of Section 271 before approval to ensure proper practices are in place – and will remain in place – to ensure a meaningful opportunity to compete. The FCC should use this opportunity to address these issues with Qwest before any approval to avoid additional problems after approval.

¹⁷ See also AZ SGAF, ¶ 5.25.1, which states: “Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party.”

Eschelon appreciates the opportunity to submit this letter

Sincerely,



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612-436-6026

cc Filed electronically
 Email distribution
 Arizona Corporation Commission
 AZ Docket No T-00000A-97-0238 Service List

EXHIBIT 1

BEFORE THE MINNESOTA PUBLIC UTILITIES
COMMISSION
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LeRoy Koppendraye
Phyllis Reha
Marshall Johnson
Gregory Scott
Kenneth Nickolai

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Eschelon
Telecom for an Investigation regarding
Customer Conversion by Qwest and
Regulatory Procedures

Docket No P-421/C-03-616

**ESCHELON'S SUPPLEMENTAL COMMENTS REGARDING
QWEST CORPORATION COMPLIANCE FILING AND ADVERTISING
CAMPAIGN**

Eschelon Telecom, Inc ("Eschelon") submits this second set of Supplemental Comments Regarding the Compliance Filing of Qwest Corporation dated August 29, 2003 ("Compliance Filing") Eschelon provides additional information that was not available at the time when Eschelon's Reply Comments were due Although Qwest suggests in its Compliance Filing that its existing practices adequately address the problem of improper Wholesale-Retail contacts and winback activity, a new Qwest advertising campaign raises questions about those practices

I. UNDISPUTED FACTS

On October 7, 2003, Qwest ran a half-page advertisement in the Minneapolis *Star-Tribune*. See Attachment 9.¹ At least one local radio station (104.1) also carried a similar advertisement on more than one occasion (on October 7, 2003 and October 8, 2003). In the written advertisement, Qwest presents an individual who it identifies as “Craig, Central Office Technician, Qwest.” See *id.* Qwest quotes its CO Technician as saying

I was on vacation when Doug from Heartland Medical Supply *called on my wireless*. He had chosen another phone company about a year ago and now all five of his lines were down. Again, He wanted to switch to Qwest®. *So I put him through to a service rep and stayed on the line* to make sure his transition to Qwest went smoothly. He was so satisfied, when we offered long-distance in his area, Doug chose that, too. When you choose Qwest, you get the savings and convenience of having it all from one company on one bill. All delivered in the Spirit of Service™.”

See Att. 9 (p. 3 shows enlarged version of this quote for readability) (emphasis added)

In large font, Qwest also includes this “quote,” stating

When another phone company dropped the ball, I picked it up.

See Att. 9 (emphasis added)

II. DISCUSSION

This Qwest advertisement raises a number of questions

1. Which company “dropped the ball,” and when did the Qwest CO Technician verify this?

Qwest’s advertisement states that “all five” of the customer’s “lines were down.”

See Att. 9. Often, Qwest causes such service-affecting outages for the end user

¹Attachments 1-6 were enclosed with Eschelon’s previous filings in this matter. Eschelon distributed Attachment 7 (entitled “Qwest Admissions in Five Documents”) during the open meeting on this matter. Attachment 8 was filed with Eschelon’s September 24, 2003 Supplemental Comments. Therefore, the Attachment here is labeled as Attachment 9.

customers of another phone company (a "CLEC") The Qwest CO technicians know this from working on such outages In fact, in two recent examples, Eschelon has asked Qwest to investigate whether Qwest CO technicians deliberately caused such outages See Attachment 10 There is ample evidence of Qwest-caused service-affecting errors (including through Qwest's own performance results)² to preclude a Qwest CO technician from assuming that a CLEC "dropped the ball" when all of the CLEC customer's lines are down Qwest often drops the ball, resulting in outages for CLEC customers, who then blame the CLEC The initial example that Eschelon brought to the Commission in this matter is just one example of Qwest dropping the ball³

By Qwest's own admission, however, the Qwest CO Technician did nothing to investigate proper responsibility before creating the impression that switching carriers would solve the problem The advertisement specifically states that, on the very *same call*, with no calls to anyone else at Qwest or any time to investigate, the CO Technician conferenced in a Qwest retail representative and *stayed on the line* to ensure a Qwest winback See Att 9 Qwest states that the CO Technician made sure the CLEC customer's transition to Qwest "went smoothly" See *id* In the initial example that prompted this matter, Qwest did not ensure that the CLEC customer's transition went

² Qwest's self-reported Performance Indicator Definition ("PID") results are publicly available at http://www.qwest.com/wholesale/downloads/2003/030925/MN_271_Sep02-Aug03_Exhibit_PID-Final.pdf In one month (August, 2003) alone, Qwest reported 2,060 Qwest-caused troubles for the following products in Minnesota: Business Resale, Centrex Resale, Centrex 21 Resale, PBX Resale, DS1 Resale, UNE-P POTS, UNE-P Centrex, UNE-P Centrex 21, Unbundled Loop-Analog, Unbundled DS1-capable Loop, and EELs Consider, for example, DS1-capable loops CLEC customers had a trouble rate of 3.41% in August Extrapolating this rate over a twelve month period, approximately 40% of CLEC circuits would have a Qwest-caused trouble during the year To make matters worse, Qwest often fails to resolve the trouble right the first time Again for DS1-capable loops in August, Qwest reports that 24% of the circuits that had trouble also experienced at least one other Qwest-caused trouble within the last 30 days See *id* pp. 293 and 295 With Qwest-caused outages being this common of a problem, Qwest's CO Technicians certainly know that they need to look at who caused an outage before claiming that the other company dropped the ball This is particularly true because CLECs generally test for and repair their own troubles Qwest CO technicians generally work on problems in Qwest's network

smoothly⁴ The CO Technician clearly knew that this was another carrier's customer but did nothing to confirm whether circumstances required referral to the CLEC instead of Qwest Retail under Qwest's allegedly "existing" procedures⁵

2. How and why did the CLEC customer know the Qwest CO Technician's direct wireless number? Was he working in a wholesale capacity?

Qwest admits in its advertisement that the end user customer had been with another carrier for approximately *a year*. See Att 9. If the CO Technician had worked on the customer's lines in the last year, therefore, he had to have done so in a *wholesale* capacity on behalf, and at the expense, of the CLEC. The advertisement states that the lines were down "again". See *id*. Perhaps this suggests that the Qwest CO Technician was involved in a wholesale role the first time and was already laying the groundwork for winback activity then. Is that how the CLEC customer got the Qwest CO Technician's wireless number? When working in a wholesale capacity, Qwest's CO Technicians are supposed to provide "unbranded" service and are prohibited from providing information about Qwest's products and services to the CLEC's customers⁶. When questions arise, the CO Technician should refer them to the CLEC.

³ See previous note

⁴ What steps did Qwest take here that are not taken for a wholesale customer? Was the standard interval applied, for example? If so, how did the CO Technician ensure a smooth transition while on the line, when the standard interval for CLECs would take much longer?

⁵ Even assuming the outage was due to the other carrier's error, the point is that the CO Technician would not have known that at the time and yet did not establish the facts or refer the customer to the CLEC.

⁶ See, e.g., Qwest-Eschelon MN ICA (based on AT&T/MCI ICA), Part A, ¶ 15.1 ("In those instances where CMTI requires USWC personnel to interface directly with CMTI customers, either orally in person or by telephone, or in writing, such personnel shall identify themselves as representing CMTI, and shall not identify themselves as representing USWC. All forms, business cards or other business materials furnished by USWC to CMTI customers shall be subject to CMTI's prior review and approval, and shall bear no corporate name, logo, trademark or tradename other than CMTI's or such other brand as CMTI shall determine. In no event shall USWC personnel acting on behalf of CMTI pursuant to this Agreement provide information to CMTI's local service customers about USWC products or services. USWC shall provide, for CMTI's review and approval, the methods and procedures, training and approaches to be used by USWC to ensure that USWC meets CMTI's branding requirements.")

3. Even assuming the CO Technician was working in a Retail capacity, why did he provide his wireless number to the customer, when Qwest refuses to do the same for its wholesale customers?

Qwest's advertisement suggests that the example in the advertisement is representative of the kind of service that other Retail customers will receive, if they switch to Qwest. What is the purpose of an example in an advertisement, after all, if not to suggest that others will receive the same treatment? Qwest does not provide direct wireless telephone numbers and this kind of access to CO Technicians, however, to its wholesale (CLEC) customers.⁷ CLEC customers of Qwest must work through large centers during scheduled hours.⁸ Qwest claimed that its processes were nondiscriminatory, and this created the impression that its Retail customers did not have that kind of access either. Based on this advertisement, it appears they actually do, unlike for wholesale.

4. What motivates a CO Technician to perform this work while on vacation? Is Qwest providing incentives to allegedly neutral/unbranded or Wholesale CO Technicians to perform Retail winback marketing activities?

In Eschelon's first set of Supplemental Comments, dated September 24, 2003, Eschelon reported another example of Qwest CO Technician involvement in a transfer to Qwest Retail for a winback effort. In footnote 4 to those Supplemental Comments, Eschelon asked whether facts in that situation suggested that there is a formal or informal understanding at Qwest that representatives will be rewarded for helping to winback customers, regardless of the appropriateness of doing so. Whether the incentive existed before, Qwest's new advertising campaign sends a strong message to its employees that

⁷ For the processes CLECs must use, *see, e.g.*, <http://www.qwest.com/wholesale/clecs/maintenance.html>

⁸ *See e.g.*, <http://www.qwest.com/wholesale/clecs/escalations.html>

going after CLEC customers during vulnerable times is strongly encouraged, even if Qwest caused the vulnerability or the Qwest employee has to go out of process to do so

III. CONCLUSION

Immediately after this Commission ordered Qwest to investigate and take responsibility for its mistakes, Qwest reacted by launching a campaign that accuses CLECs of dropping the balls repeatedly (“again”), regardless of whether the CLEC is actually responsible for the problems. In Qwest’s Compliance Filing, Qwest states that its methods documentation provides for the following procedures

Never disparage a competitor or imply that the customer will be sorry if they obtain poor service from a competitor. Do not imply that the customer will obtain poor or slow service from a competitor. Attempting to ‘unhook’ the customer from a competitor may result in fines, law suits, and regulatory complaints against Qwest for anti-competitor behavior

See Qwest Compliance Filing, p. 3. Qwest’s entire advertising campaign, however, implies that the competitor provided poor service by dropping the ball, more than once (“again”), and implies that customers will obtain poor or slow service from competitors. *See* Att. 9. The message to Qwest’s own employees about how to portray events to customers is clear.

With respect to the particular example raised by Eschelon in its initial filing in this matter, the Commission has found that Qwest provided inadequate service and has ordered Qwest to remedy the situation. Given the more recent examples presented in both sets of Eschelon’s Supplemental Comments, the Commission may want to take a hard look at the representations in Qwest’s Compliance Filing, as well as determine

whether to investigate the larger issue of wholesale-retail contacts and winback activity

further on its own motion

Dated October 9, 2003



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EXHIBIT 2

BEFORE THE MINNESOTA PUBLIC UTILITIES
COMMISSION
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LeRoy Koppendrayer
Phyllis Reha
Marshall Johnson
Gregory Scott
Kenneth Nickolai

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Eschelon
Telecom for an Investigation regarding
Customer Conversion by Qwest and
Regulatory Procedures

Docket No P-421/C-03-616

**ESCHELON'S SUPPLEMENTAL COMMENTS REGARDING
COMPLIANCE FILING OF QWEST CORPORATION**

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Regarding the Compliance Filing of Qwest Corporation dated August 29, 2003
("Compliance Filing") Eschelon provides additional information that was not available
at the time Eschelon's Reply Comments were due Although Qwest suggests in its
Compliance Filing that its existing practices adequately address the problem of improper
Wholesale-Retail contacts and winback activity, another example has occurred since
then

Enclosed is the Qwest repair history for an Eschelon business customer who had
trouble on its line See Attachment 8¹ Qwest makes this history available to
Competitive Local Exchange Carriers ("CLECs") through a repair interface known as

¹ Attachments 1-6 were enclosed with Eschelon's previous filings in this matter. Eschelon distributed Attachment 7 (entitled "Qwest Admissions in Five Documents") during the open meeting on this matter. Therefore, the Attachment here is labeled as Attachment 8

Customer Electronic Maintenance and Repair (“CEMR”) The Qwest history shows that Eschelon tested the line and then submitted a ticket electronically (through CEMR) to the Qwest repair center Per Qwest’s process, Eschelon contacts the same repair center (i.e. the same Qwest personnel and processes) regardless of the state in which the trouble occurs.² The history shows that Qwest conducted a test and then dispatched a Qwest technician to the Eschelon customer premises See Att 8 Although the technician is employed by Qwest, the technician went to the customer premises in a wholesale capacity to make a repair on behalf of Eschelon (and Eschelon pays Qwest for that service through rates approved by this Commission)

The Qwest closing notes in the repair history for this ticket shows that Qwest took the following action when closing the ticket

NAR GDS SUB MVD TO [Redacted], **RFD TO BO FOR WINBAC**
10 DNT=09-22-03 247P EC=899 ST=CLO RTE=00000899 WP=NWP
RSL=
NAR GDS SUB MVD2 [Redacted] ,**RFD2BO4WINBACK,TV 510**

See Attachment 8

These Qwest notes (in bold with underlining) clearly show a Qwest wholesale referral (“RFD”) to the Qwest Retail business office (“BO”) for the purpose of winning back a customer from a competitor.³ The end-user customer is an Eschelon customer Qwest knows of the trouble only because of its role as a wholesale vendor to Eschelon Eschelon is Qwest’s customer in this case Nonetheless, the Qwest wholesale

² See <http://qwest.com/wholesale/clecs/escalations.html> Although this particular customer is in Arizona, therefore, the process is the same across states, including Minnesota

³ In this case a Qwest representative chose to record the winback referral in written documentation accessible to CLECs A bad result would be for the practice to continue while the documentation is no longer be available to CLECs The end result should be to stop the practice not to make it more difficult to discover and prove Qwest has said it disciplines representatives that engage in such conduct While representatives may need training and/or discipline, they should not suffer simply for having documented the activity Without the documentation, the practice would continue but not be discovered

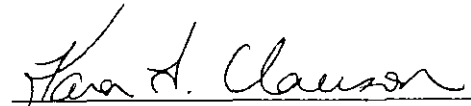
representative took confidential information belonging to Eschelon at a critical time in Eschelon's relationship with its customer and used it to attempt to benefit Qwest Retail ⁴ Qwest's conduct is illegal

In addition, this conduct should have been prevented by procedures that Qwest claims it either had in place or put in place as a result of the Commission's Order in this matter requiring Qwest to implement "procedures for ensuring that retail service representatives are properly separated from the Company's wholesale operations." See Order Finding Service Inadequate and Requiring Compliance Filing, Docket No. P-421/C-03-616, p. 9, ¶ 1(a) (July 30, 2003) ("Order"). The goal was to "separate" wholesale from retail on these issues. In its Compliance Filing, Qwest discusses procedures for training retail representatives, but not wholesale representatives. Quite a loophole exists if Qwest can avoid the rule by simply having Qwest Wholesale cause the contact with Qwest Retail instead of the reverse. In any event, there is no indication in the repair history that the Retail representative in the Qwest business office (who has allegedly received adequate training) objected to this winback referral resulting from wholesale activity or reported it so that proper action could be taken with the wholesale representative.

⁴ In this case, the Qwest closing comment referring to a winback concludes with the notation "TV 510." Qwest should indicate whether this information (or other information in the history) identifies the Qwest representative who entered this remark and whether that representative did so with the expectation of being rewarded if the contact resulted in a winback. If so, this may suggest that there is a formal or informal understanding at Qwest that representatives will be rewarded for helping to winback customers in this manner.

With its Order, the Commission gave Qwest an opportunity to persuade the Commission that the multiple problems that occurred in this case would not occur again. This additional evidence of improper use of wholesale information for winback activity demonstrates that Qwest has more work to do. As indicated in Reply Comments filed by the Department of Commerce as well as Eschelon, Qwest's "proposals" in its Compliance Filing were short on specifics as to what Qwest plans to do.

Dated September 24, 2003



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ATTACHMENT 8
EXCERPT FROM QWEST REPAIR HISTORY FOR CEMR TICKET NO. 0297117
(with emphasis and footnotes added and
confidential/trade secret customer-identifying information redacted)

Non Design Circuit DLETH History

Circuit ID [Redacted]

DLETH EC 666 TN [Redacted] DPA 0 LD 01-01-69 HD 09-23-03 PRTR

LN RBA07[Redacted]

SA [Redacted]

LOC

---HIST---

NO REPORT S CLEARED CLOSED TST RPM SWK RSL T D C

1 09-22-03 1159A 0 09-22-03 247P 09-22-03 353P 0 510 0 0 407 1006 600

LN - RBA07[Redacted], REA CAT 1

01 DTR=09-22-03 1159A COM=09-22-03 700P RSA=666 O/S=Y EXC=N

CALLED-NO= - - CATEGORY=1 VER=LU CVER=

*NAR CBC OOS MED ESCHELON@@CBC RCOM RNA TIC YES MLT SHOWS, OPEN IN
CABLE, DPO*

NAR EPAIR,CLBK, REFUSE COMMIT

NAR A B JEFFREY J BELLIN 8886069446¹

02 DNT=09-22-03 1159A EC=666 ST=PSM RTE=00000000 WP=NWP RSL=LU

NAR

03 DNT=09-22-03 1201P EC=299 ST=PSH RTE=00000299 WP=NWP RSL=LU

NAR 760AVLUT100-499,600-899N

DLETH EC 666 TN [Redacted] DPA 0 LD 01-01-69 HD 09-23-03 PRTR

04 DNT=09-22-03 1204P EC=256 ST=PDB RTE=00000997 WP=SCR RSL=100
NAR **DISP BUS OOS OPEN OUT IN CABLE-NDT 500-1000' FROM STA-WF²**

05 DNT=09-22-03 1205P EC=256 ST=PDB RTE=00000256 WP=NWP RS
L=100

NAR **DISP BUS OOS OPEN OUT IN CABLE-NDT 500-1000' FROM STA-WF**

06 DNT=09-22-03 1206P EC=899 ST=PRD RTE=00000510 WP=NWP RSL=

NAR GDS PREASSIGNED FOR WORK TODAY 09-22-03 1230P

07 DNT=09-22-03 1206P EC=899 ST=DPO RTE=00000510 WP=NWP RSL=

NAR GDS JOB DISPATCHED BY DO 09-22-03 0124P

08 DNT=09-22-03 124P EC=899 ST=DPO RTE=00000510 WP=DO RSL=

NAR GDS DO-PROVIDED DISPATCH START TIME

09 DNT=09-22-03 247P EC=510 ST=CCA RTE=00000899 WP=CRO RSL=

NAR GDS SUB MVD TO [Redacted],**RFD TO BO FOR WINBAC³**

10 DNT=09-22-03 247P EC=899 ST=CLO RTE=00000899 WP=NWP RSL=

NAR GDS **SUB MVD2 [Redacted],**RFD2BO4WINBACK,TV 510,⁴****

NAR CLEC = A07 REBUNDLE QWEST RESALE/INTE

LAST CLIP DATE - 0-

¹ These notes in italics show that Eschelon tested the line and then called the Qwest repair center

² These notes in bold show that Qwest conducted a test and then dispatched a Qwest technician to the Eschelon customer premises

³ These notes in bold with underlining show a Qwest referral to the Qwest business office ("BO") for winback

⁴ These notes in bold with underlining show a Qwest referral to the Qwest business office ("BO") for winback